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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 334th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 May 1998, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Kuwait

Second periodic report of New Zealand (continued)

* The summary record of the closed part of the meeting appears as document CAT/C/SR.334/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Kuwait (CAT/C/37/Add.1)

1. At the invitation of the Chairman, Mr. al-Noori and Mr. al-Jassam (Kuwait) took places at the Committee table.

2. The CHAIRMAN invited the Kuwaiti delegation to introduce Kuwait's initial report (CAT/C/37/Add.1).

3. Mr. AL-NOORI (Kuwait) stressed the importance that Kuwait attached to the submission of its initial report in the context of the fiftieth anniversary of the Universal Declaration of Human Rights and the forthcoming celebration, on 26 June, of United Nations International Day in Support of Victims of Torture.

4. The Kuwaiti people resolutely condemned all acts of torture and associated practices. Action at the national level - establishment or strengthening of democracy and the rule of law - was undertaken in a context of international cooperation and, in particular, of respect for all provisions of the Convention. Kuwaiti lawmakers, concerned to give constitutional status to the provisions prohibiting torture, had devoted two articles of the Constitution to the subject. Before the promulgation of the Constitution, the Penal Code and the Code of Criminal Procedure had already contained provisions criminalizing torture and prohibiting the use of evidence obtained through torture in the courts. Unfortunately, cases of torture had been recorded in Kuwait during the brutal occupation of the country in 1990-1991. The United Nations Security Council had, in fact, adopted a number of resolutions on the subject. Concluding his general introduction, he reaffirmed Kuwait's commitment to the Charter of the United Nations and to its aims and noted that Kuwait had been one of the first countries in the region to accede to the Convention.

5. Introducing the report, he said that the country was 17,000 km^2 in area and that the population numbered some 2 million inhabitants, of whom 750,000 were Kuwaiti nationals. There were many foreigners, 120 nationalities being represented. Oil was the country's main resource and Kuwait boasted one of the highest per capita incomes in the world.

6. Kuwait had opted for a political structure that was midway between a parliamentary and a presidential regime. Legislative authority was vested in the National Assembly, which also had supervisory authority over the executive. The Assembly consisted of 50 members. The judiciary was entirely independent, as stipulated by the Constitution.

7. The protection of human rights was guaranteed by a large number of laws and by chapters 2 and 3 of the Constitution. Many legislative enactments had been promulgated over the years with a view to strengthening the protection of fundamental human rights, and an article of the Constitution stipulated that any amendment thereto should serve that purpose. A Standing Commission on

human rights affairs had been established as well as a Standing Committee in the Ministry of the Interior, which was authorized to receive complaints from citizens concerning violations of their rights.

8. With regard to the application of international treaties in Kuwait, article 70 of the Constitution stipulated that treaties were automatically incorporated in national legislation and had force of law. With regard to information and publication, it should be noted that, pursuant to the Constitution, all legislation must be published in the Official Gazette and in other journals where appropriate. Sentences handed down by the Kuwaiti courts against State officials convicted of acts of torture were annexed to the report.

9. During the period of occupation already referred to (1990-1991), acts of torture had been committed by Iraqi soldiers. In the intermediate period that followed the occupation, i.e. before the return of the legitimate authorities from Saudi Arabia, Kuwaitis had regrettably also been guilty of human rights violations. On its return, the Government had given priority to the task of ending such violations and ensuring that the perpetrators were brought to justice.

10. With regard to the implementation of article 3, he quoted a passage from the report of a humanitarian organization concerning refoulement and extradition procedures conducted in full compliance with the provisions of the Convention.

11. Articles 120, 121 and 125 of the Penal Code were fully consistent with the provisions of article 4 of the Convention.

12. With regard to extradition, the provisions of the Convention were comparable to similar provisions of the International Convention against the Taking of Hostages and other anti-terrorist instruments. In its bilateral relations, Kuwait sought to conclude equitable extradition agreements that were compatible with respect for human dignity. It endeavoured to establish sound judicial cooperation by signing bilateral and international treaties and, in cases where no agreement existed, it based extradition on reciprocity, the aim being to prevent criminals from evading justice.

13. The training of officials provided for in article 10 of the Convention was conducted in a number of different ways. Law students at Kuwait University studied the Penal Code and the Code of Criminal Procedure, both of which contained provisions prohibiting the use of torture. Police Academy students and future judges attending the Institute for Judicial Studies were also made aware of the issues involved. He understood that the Committee had developed precise guidelines in that regard which his country was very eager to learn about and put into practice.

14. Article 11 of the Convention stipulated that each State party should keep interrogation rules and practices under systematic review. The Kuwaiti Code of Criminal Procedure was quite explicit in that regard, stipulating, in particular, that a suspect was entitled to refrain from making a statement in the absence of his lawyer. With regard to the application of articles 12 and 13, all investigations of acts of torture were conducted with the greatest

dispatch, chiefly to ensure that the time spent in custody was as short as possible. The rights protected in article 14 were guaranteed by the Civil Code, and a torture victim could claim reparations and compensation for any damage incurred.

15. Confessions or statements obtained under torture could not be deemed admissible by Kuwaiti courts under any circumstances: in such cases, they were declared null and void. Article 16 of the Convention was also fully applied in Kuwait. In conclusion, he stressed his country's commitment to the strengthening of human rights, a goal that must be pursued relentlessly at both the national and international level. He eagerly awaited the Committee's advice and guidance and welcomed the dialogue that had thus been initiated.

16. The CHAIRMAN (Country Rapporteur) thanked the Kuwaiti delegation for its interesting introduction, which had already shed light on a number of points. As rapporteur, he noted that the initial report had been received only six months after the due date, which was exceptional and deserved to be stressed. On the whole, the report was in conformity with the Committee's general guidelines concerning the form and content of reports.

17. The first question concerned the judicial system: who appointed judges, what criteria were applied and, above all, who could remove them from office and under what circumstances?

18. Paragraph 30 of the report referred to "an innocent person who [had] not yet been convicted", it being understood that, if a person was found guilty, the punishment imposed on him could not be regarded as torture or degrading treatment. But the Committee was concerned not only with persons who had not been convicted but equally with those who had, because the provisions of the Convention applied to them too and, in their case, it was the form of punishment that was important. Perhaps paragraph 30 referred to article 1 of the Convention, which stated that the term torture did not apply to suffering arising from lawful sanctions. However, article 16, which dealt with cruel, inhuman or degrading treatment or punishment, contained no such reservation, and it was quite possible that a punishment duly prescribed by law was incompatible with article 16. Moreover, the "sanctions" mentioned in article 1 must not only be lawful under domestic law but also in terms of basic internationally recognized norms. The type of punishment imposed was in that respect a vital element. The legitimacy of capital punishment as such was still a matter of debate among specialists in international law, but it was an indisputable fact that the use of particularly cruel methods of execution by States was a clear breach of international law and such executions could not be viewed as lawful, even under the terms of article 1 of the Convention. He therefore wished to know what kinds of punishment were imposed in Kuwait; he knew that capital punishment existed, but what methods were used for the purpose? Was there corporal punishment and, if so, what form did it take?

19. He would appreciate additional information on the two cases of torture mentioned in paragraph 41 of the report, more specifically on the behaviour of the police officers in question. With regard to the remedies available to individuals, it would be interesting to know whether civil and administrative remedies also existed in the case of criminal proceedings.

20. With regard to article 1 of the Convention, he asked how the provisions of the Convention were incorporated in domestic law, in particular whether the definition of torture given in the Convention was included in criminal law, because, in the Committee's view, that was the best way for State parties to implement article 1. In the absence of such a reference to the definition given in the Convention, it was virtually impossible for them to compile accurate information on the incidence of torture and report it to the Committee. The definition also made it possible to establish a qualitative distinction between torture and offences that were less serious in moral terms, such as assault, and to treat them differently. Could due obedience to a higher authority be invoked as a defence under Kuwaiti domestic law? Or was a defence of necessity applicable in such cases and, if so, could it be applied to acts of torture?

21. The representative of Kuwait had provided useful information on violations committed in Kuwait during the transitional period, specifying in particular that the Kuwaiti authorities, after resuming control over the territory, had brought persons who had committed acts of torture to justice. In how many cases had legal action been taken and what had been the outcome?

22. With regard to asylum, it would be useful to have a brief description of the procedures followed when a person applied at the border for admission as a political refugee. Moreover, he gathered that there were some 117,000 Bedouins in Kuwait: were they Kuwaiti nationals and, if not, what was their legal status?

23. Paragraphs 72, 86 and 88 of the report contained information on the implementation of article 4 of the Convention but he wished to know, more generally, about the powers of arrest of the police force, on the one hand, and the security forces, on the other, unless they were a single body in Kuwait. Did a summary arrest procedure exist and, if so, in what cases was it applicable? What were the powers of detention of the police and security forces and what was the maximum period of such custody? Was there an administrative detention regime? Were all forms of detention subject to review under a habeas corpus or similar procedure, how soon could a detained person communicate with a relative and a lawyer, and was there legal provision for incommunicado detention? Lastly, he wished to know what exactly were the functions of the examiner referred to in paragraph 86 of the report.

24. How many extradition treaties had Kuwait signed and could it extradite its own nationals? If a Bosnian commander living in Kuwait was accused by Croatia of having tortured Croatians during the well-known recent events, there being no question of a crime against humanity, systematic torture, etc., and if Kuwait had not signed an extradition treaty with Croatia but had been provided by the latter with all requisite evidence in support of its extradition request, would Kuwait have that person brought to justice? In other words, was its jurisdiction universal? Mutual legal assistance was very important for the implementation of the Convention and he wished to know how many such agreements Kuwait had concluded and with which States. Lastly, he asked whether it had contributed to the United Nations Voluntary Fund for Victims of Torture and, if not, whether it would contemplate doing so to mark the fiftieth anniversary of the Universal Declaration of Human Rights.

25. Mr. EL MASRY (Alternate Country Rapporteur) congratulated the State party, the first in his region to have submitted a report to the Committee, and thanked the representative of Kuwait for his highly informative introduction.

26. Article 10 of the Convention dealt with education regarding the prohibition against torture, not only for law enforcement officers but for all civil or military personnel and medical personnel who might be involved in the custody, interrogation or treatment of individuals subjected to any form of detention. It had been stated in that connection that the Penal Code and the Code of Criminal Procedure were on the syllabus of the Faculty of Law, the Policy Academy and the Institute of Judicial Studies, but article 10 was basically concerned with training and education in human rights and in respect for such rights. The delegation had announced, moreover, that it was perfectly willing to follow the Committee's suggestions in that regard.

27. With regard to article 11 of the Convention, it would be useful to know whether Kuwait had a procedure for monitoring compliance with interrogation rules and practices and the provisions regarding the treatment of prisoners, and whether such supervision was mandatory. Paragraphs 54 and 55 of the report concerning the many human rights violations perpetrated in Kuwait during the transitional period stated that measures had been taken to prevent any recurrence of such violations: he wished to know what those measures were. Paragraph 110 stated that the Kuwaiti courts had tried persons who had been found to be involved in acts of torture. Were they law enforcement officers, such as prison wardens, what was the nature of the offences committed and how had the investigation been conducted? Had disciplinary action been taken against the persons concerned and what judgements had been handed down by the courts? With regard to article 12 of the Convention, he asked the delegation to specify, with regard to psychiatric hospitals, what procedure existed for filing a complaint in cases of torture and what action was taken on such complaints.

28. With regard to articles 12 and 13 of the Convention, he would appreciate additional information about the complaints of torture mentioned in paragraph 110 of the report. He asked whether the perpetrators had been law enforcement officers, whether disciplinary measures had been taken against them, what offences had been involved and what judicial decisions had been taken. He inquired about the procedures applicable to acts of torture committed in psychiatric hospitals. He also wondered about the meaning of the phrase "and ensure the triumph of justice" at the end of the first sentence of paragraph 110. For the Committee, ensuring the triumph of justice meant punishing the torturer, compensating the victim and providing for his rehabilitation. With regard to article 14, he asked for clarification of the first sentence of paragraph 124 of the report, which stated that torture obviously fell within the category of offences constituting unlawful acts; was that status reflected in a legal instrument? With regard to article 15 of the Convention, the Committee naturally welcomed the fact that the rules of evidence in Kuwait were in conformity with the principle established long ago in the provision of the Islamic Shari'a according to which "anything based on an invalid premiss [was] itself invalid". More generally, he congratulated the Kuwaiti authorities on the various measures they had taken to restore normal democratic conditions in the country.

29. Mr. SØRENSEN, referring to the application of article 10 of the Convention and speaking as a doctor, stressed the importance of training doctors to deal with the problem of torture in a country such as Kuwait, where many individuals had been tortured during the war. The after-effects of torture were long-lasting and doctors should be able to detect them in their patients and offer them assistance. With regard to article 14 of the Convention, he was pleased to note that a State-funded rehabilitation centre for torture victims had been established in Kuwait after the war and had treated a large number of individuals - one or two thousand or even more. Kuwait had not contributed to the United Nations Voluntary Fund for Victims of Torture and could perhaps envisage doing so on the occasion of United Nations International Day in Support of Victims of Torture, to be observed on 26 June, in accordance with a United Nations General Assembly resolution. A contribution would be important not only because the Fund needed money, but also because torture victims would benefit greatly from the participation of a country with experience of the phenomenon of torture.

30. Mr. CAMARA, warmly welcoming the submission of Kuwait's report, said that Islamic countries had nothing to fear from an appearance before the Committee, since there was no place for torture in the rules of evidence established by Islamic law. Referring to paragraph 34 of the report, he asked whether there was a definition of torture in Kuwaiti legislation and what penalties were prescribed for officials found guilty of acts of torture. Noting from paragraph 105 of the report that no arrested person could be held in custody for more than four days without a written order, he asked what period of custody could be ordered by a judge. With regard to the 1990 and 1996 Organization of the Judiciary Acts, he asked for information on the recruitment of judges. Was there a body responsible for administering judges' careers and, if so, to whom was it answerable and how were its members appointed?

31. The CHAIRMAN thanked the Kuwaiti delegation and invited it to respond to the questions at the next meeting.

32. The Kuwaiti delegation withdrew.

The public part of the meeting was suspended at 11.40 a.m. and resumed at noo 1

Conclusions and recommendations concerning the second periodic report of New Zealand (continued)

33. The CHAIRMAN read out a letter* sent to him by Mr. Farrell, Permanent Representative of New Zealand to the United Nations Office at Geneva, after his delegation had taken note of the Committee's conclusions on the second periodic report of New Zealand.

> "We advised the Committee at the conclusion of its consideration of New Zealand's second periodic report under Article 19 of the

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* This letter is reproduced in full pursuant to a decision by the Committee.

Convention against Torture that the New Zealand Government would wish to submit further comments in response to the concluding observations and recommendations of the Committee.

Having considered carefully the recommendations made by the Committee, the New Zealand Government wishes to express its view that, with respect to the recommendations contained in paragraphs 8 and 9 of the Committee's conclusions and recommendations, it has already taken the action recommended by the Committee. These actions, taken by the Government in response to the Mangaroa Prison inquiry, are fully set out in New Zealand's second periodic report and supporting information. New Zealand's statement introducing the report brought to the attention of the Committee the further significant actions taken since the reporting period.

For the Committee's clarification, the New Zealand Government wishes to reiterate the following points made in New Zealand's statement and by the delegation in response to the Committee's questions:

The inquiry by the New Zealand Police into allegations of assault by inmates of Mangaroa Prison has been completed. After referring Police files to the Solicitor-General it was decided that no criminal prosecution would be undertaken. Internal disciplinary action was taken against a number of prison officers by the Department of Corrections.

The Ministerial investigation of Mangaroa Prison has been completed. The results of the inquiry are contained in a report annexed to New Zealand's second periodic report and set out in paragraphs 16 to 21 of the report.

There have been significant changes to the operations of Mangaroa Prison, and in prisons generally, as a result of the Government's inquiry, to ensure that such incidents cannot occur again. Those highlighted by New Zealand's introductory statement and dialogue with the Committee include the following:

- Mangaroa Prison has a new regional manager, a new management structure with more accountability, a new name and constructive new projects, for example cooperation with the Maori community to provide inmates and managers with cultural advice and support;

- New Penal Institutions Regulations are about to come into force, and amendments have been made to the Penal Institutions Act 1954, which provide for improved operational standards in New Zealand prisons. The amendments include specific limitations on the use of force in cases where the restraint of inmates is necessary;

- A Custodial Assurance Board has been established to ensure the secure custody and safe, fair and humane treatment of persons within the corrections system;

- Revised grievance procedures for prison inmates are now in place. The internal complaints process has been strengthened. The role of the Ombudsman has also been strengthened to provide an effective external complaints process, in addition to that of the Prison Inspectorate which reports to the Chief Executive of the Department for Courts and the Custodial Assurance Board;

- Steps have been taken to ensure inmates are aware of, and are able to access, these procedures;

- Procedures for recruiting prison officers have been revised to ensure that officers have the appropriate competencies, and new initiatives are being implemented with respect to their ongoing training and development.

Given this comprehensive response to the situation at Mangaroa prison, the New Zealand Government would appreciate the Committee's further consideration of the above points as part of its deliberations on New Zealand's second periodic report. We should also appreciate it if this letter could be read into the record of the Committee."

34. In response to the letter, the Committee had decided by consensus to express regret for the mistake to which the Ambassador of New Zealand had drawn attention, to reproduce the Ambassador's letter in full in the summary record of the public meeting, and to insert a reference to the symbol of the summary record in paragraph 1 of the conclusions and recommendations on the second periodic report of New Zealand to be published in the Committee's annual report. The reference to that record and to the records of the other meetings at which New Zealand's report had been considered ensued from the Committee's decision to view the above-mentioned letter and the regrets expressed by the Committee as forming an integral part of the Committee's consideration of the second periodic report of New Zealand.

35. Mr. EL MASRY suggested that the Chairman should reply to the Ambassador of New Zealand, informing him of the Committee's decision.

36. The CHAIRMAN said that, if there was no objection, he would send a letter to the Ambassador of New Zealand on behalf of the Committee.

37. It was so decided.

The public part of the meeting rose at 12.10 p.m.